

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT

In the Matter of	)	Case Nos.: <b>12-O-14295-LMA</b>
	)	(13-O-10591; 13-O-10796;
<b>DENNIS M. ASSURAS,</b>	)	13-O-11291; 13-O-11460);
	)	13-O-14928 (Cons.)
<b>Member No. 85874,</b>	)	
	)	<b>DECISION</b>
A Member of the State Bar.	)	
	)	
	)	

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**Introduction**<sup>1</sup>

In this contested, original disciplinary proceeding, respondent **Dennis M. Assuras** is charged with 19 counts of professional misconduct involving six consolidated matters. The charged acts of misconduct include, among other things, practicing law while suspended, sharing fees with non-attorneys, aiding the unauthorized practice of law, failing to refund unearned fees, charging an illegal fee, and failing to comply with the conditions of disciplinary probation.

This court finds, by clear and convincing evidence, that respondent is culpable on 18 counts. Based on the nature and extent of culpability, as well as the applicable aggravating and mitigating circumstances, in conjunction with meeting the goals of attorney discipline, the court recommends, among other things, that respondent be suspended for two years and until he makes restitution and provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law.

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<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

### **Significant Procedural History**

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) in case nos. 12-O-14295 (13-O-10591; 13-O-10796; 13-O-11291; 13-O-11460) on August 22, 2013. Respondent filed a response to the NDC on September 19, 2013.

On September 17, 2013, the San Bernardino District Attorney's Office filed criminal charges against respondent relating to the unauthorized practice of law. These charges were related to the charges contained in the NDC. On November 4, 2013, this matter was abated pending resolution of the criminal matter.

On May 30, 2014, the State Bar filed a second NDC in case no. 13-O-14928. On June 10, 2014, respondent filed a response to the second NDC.

The two NDCs were subsequently consolidated. On August 4, 2014, these matters were unabated and set for trial after the criminal charges were resolved. On September 24, 2014, the parties filed a Partial Stipulation as to Facts and Culpability and Admission of Documents.<sup>2</sup>

Trial was held on September 30 and October 1, 2014. The State Bar was represented by Senior Trial Counsel Kimberly Anderson. Respondent represented himself. The court took the matter under submission for decision on October 1, 2014.

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on May 31, 1979, and has been a member of the State Bar of California at all times since that date.

#### **Background Facts**

At all times herein, Pro Legal Solutions was owned and run by non-attorneys Rodrigo Chavez (Chavez) and Jesse Gonzalez. At all times herein, Pro Legal Solutions's office was

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<sup>2</sup> This stipulation was supplemented on September 30, 2014.

located at 8275 Sierra Avenue, #106, Fontana, California (the Pro Legal Solutions office) and had respondent's name on the window which stated, "Dennis Assuras, Attorney-at-Law," with respondent's knowledge and consent. At no time did respondent own or control Pro Legal Solutions, and he did not have access to Pro Legal Solutions's bank accounts. Respondent permitted his name to be used by Pro Legal Solutions to make it appear as if an attorney were running Pro Legal Solutions.

At all times herein, respondent accepted approximately four to six cases per month from Pro Legal Solutions, and visited the Pro Legal Solutions office approximately once or twice a month. Respondent received only a portion of the fees that clients paid to Pro Legal Solutions for any cases he accepted from Pro Legal Solutions. At all times alleged herein, respondent maintained his law office at 12930 Central Avenue, Chino, California (the Chino office).

On August 10, 2012, the Hearing Department of the State Bar Court filed a decision in State Bar Court case number 11-O-19134, making disciplinary recommendations to the California Supreme Court, including but not limited to a recommendation that respondent receive a 30-day actual suspension of his license to practice law in California and that respondent remain suspended until he pays the costs of discipline.

On December 3, 2012, the California Supreme Court filed an Order in case number S205546 (State Bar Court case no. 11-O-19134) (the December 3, 2012 Order) suspending respondent from the practice of law in California for 30 days and until he pays the costs of discipline.

On December 3, 2012, the Clerk of the Supreme Court properly served respondent with a copy of the December 3, 2012 Order. Respondent received the December 3, 2012 Order.<sup>3</sup>

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<sup>3</sup> Respondent's testimony that he did not receive this order and did not know he was suspended until January 18, 2013, was not credible. Even assuming, arguendo, that he did not know he was suspended until January 18, 2013, respondent should have known and was grossly

The December 3, 2012 Order became effective on January 2, 2013, thirty days after it was filed. Respondent was actually suspended from practicing law in California as a result of his disciplinary suspension between January 2 and February 14, 2013.

### **Case No. 12-O-14295 – The Chavira Matter**

#### **Facts**

On October 27, 2011, Richard Chavira (Chavira) met with respondent and Chavez at the Pro Legal Solutions office. Chavira wanted to hire an attorney to represent him in a civil action and to file a restraining order against Automotive Finance Corporations (AFC). During the meeting, and in respondent's presence, Chavez asked Chavira to pay \$10,000 in advanced legal fees to represent Chavira. Chavira stated he could not afford to pay the \$10,000 and left the Pro Legal Solutions office.

Later that same day, Chavez called Chavira and told him that the fee would be reduced to \$7,000. Respondent was not present during the telephone conversation and did not negotiate the fee. Chavez negotiated the fee with Chavira without any involvement from respondent.

On October 28, 2011, Chavira met with Chavez at the Pro Legal Solutions office and paid \$5,000 in advanced fees to Pro Legal Solutions in order for Pro Legal Solutions and respondent to represent him in a civil action and to file a restraining order against AFC. Respondent was not present during this meeting. Chavira signed a retainer agreement indicating that respondent and Pro Legal Solutions would be representing him, but respondent did not execute the retainer agreement. Chavez also provided Chavira with Pro Legal Solutions's business cards for himself and for respondent indicating that respondent was an attorney at the

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negligent in not knowing. For respondent signed the disciplinary stipulation in July 2012 and knew that a suspension was coming. The validity and weight of respondent's claimed ignorance is further tarnished by the fact that, as laid out in more detail below, respondent continued to practice law while suspended even after he acknowledges learning about his suspension.

Pro Legal Solutions office and indicating that respondent had the same address and telephone number as the Pro Legal Solutions office.

Pro Legal Solutions paid respondent approximately \$2,000 of the \$5,000 in advanced fees it collected from Chavira.

In November 2011, Chavira telephoned both respondent and Chavez at the Pro Legal Solutions office and left messages requesting status updates regarding his case. Respondent received the messages. Neither respondent nor Chavez returned any of Chavira's telephone calls.

In the latter part of November 2011, Chavira searched the internet to locate additional contact information for respondent, and learned that respondent had another office and telephone number at the Chino office. Chavira then telephoned respondent at the Chino office and spoke with respondent. Respondent told Chavira that he was working on Chavira's case.

In December 2011, Chavira called respondent at the Chino office and spoke with respondent again. Respondent assured Chavira that he was working on Chavira's case.

On May 24, 2012, Chavira filed a State Bar complaint against respondent. On July 26, 2012, Chavira again telephoned respondent at the Chino office and requested a refund. Respondent told Chavira that he could not refund Chavira's money since Chavira paid Pro Legal Solutions. Respondent told Chavira he would have to request a refund from Pro Legal Solutions. Respondent has not refunded any of the \$5,000<sup>4</sup> and has not provided Chavira with an accounting.

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<sup>4</sup> As noted below, the evidence indicated that respondent performed some legal services on Chavira's behalf.

## **Conclusions**

### ***Count One – Rule 3-110(A) [Failure to Perform Legal Services with Competence]***

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. The State Bar alleged that respondent violated rule 3-110(A) by failing to perform any services of value for Chavira, failing to file a civil action for Chavira, and failing to file papers to obtain a restraining order on behalf of Chavira. The evidence before the court, however, does not establish, by clear and convincing evidence, a violation of rule 3-110(A). Accordingly, Count One is dismissed with prejudice.

### ***Count Two – Rule 1-320(A) [Sharing Fees with Non-Lawyers]***

Rule 1-320(A) provides, with limited exceptions, that an attorney must not directly or indirectly share legal fees with a non-lawyer. By splitting the legal fees with Pro Legal Solutions, respondent shared a legal fee with a person who is not a lawyer, in willful violation of rule 1-320(A).

### ***Count Three – Rule 1-300(A) [Aiding the Unauthorized Practice of Law]***

Rule 1-300(A) provides that an attorney must not aid any person or entity in the unauthorized practice of law. By permitting non-attorneys at the Pro Legal Solutions office to set the fee for Chavira, enter into a retainer agreement with Chavira, and make it appear that respondent was running Pro Legal Solutions, respondent aided a person or entity in the unauthorized practice of law, in willful violation of rule 1-300(A).

### ***Count Four – Section 6105 [Permitting Misuse of Name]***

Section 6105 prohibits an attorney from lending his or her name to be used as an attorney by another person who is not an attorney. By permitting his name to be used by Pro Legal Solutions to make it appear as if an attorney were running Pro Legal Solutions, respondent lent his name to be used by a non-attorney, in willful violation of section 6105.

***Count Five – Rule 3-700(D)(2) [Failure to Return Unearned Fees]***

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. Although it was not proven by clear and convincing evidence that respondent failed to perform legal services with competence, it has been established that he only performed legal services in the total amount of \$2,375. (See Exhibit #16.) Consequently, respondent should have refunded \$2,625 (\$5,000 - \$2,375) to Chavira. By failing to refund \$2,625 in unearned fees to Chavira, respondent failed to return unearned fees, in willful violation of rule 3-700(D)(2).

***Count Six – Rule 4-100(B)(3) [Failure to Account]***

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property. By failing to provide Chavira with an accounting of the \$5,000 attorneys fee, respondent failed to render appropriate accounts to a client regarding all client funds coming into respondent's possession, in willful violation of rule 4-100(B)(3).

**Case No. 13-O-10591 – The Plunkett Matter**

**Facts**

As noted above, respondent was actually suspended from the practice of law in California between January 2 and February 14, 2013. On January 18, 2013, respondent made an appearance as the attorney for petitioner Raphael Plunkett in the case entitled *Raphael Plunkett v. Leo Figueroa*, Los Angeles County Superior Court case no. KS 016739.

**Conclusions**

***Count Seven – Section 6068, Subd. (a) [Unauthorized Practice of Law]***

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. Section 6125 provides that only active

members of the State Bar may lawfully practice law in California. By appearing as the attorney for Plunkett when respondent knew or should have known that he was not entitled to practice law in California, respondent held himself out and practiced law when he was not an active member of the State Bar of California. Respondent willfully violated sections 6125 and 6126 and thereby failed to support the laws of the State of California, in willful violation of section 6068, subdivision (a).

As illustrated below, the same facts and circumstances establish respondent's culpability in Counts Seven and Eight. The court therefore assigns no additional weight to Count Seven in determining the appropriate discipline.

***Count Eight – Section 6106 [Moral Turpitude]***

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. By appearing as the attorney for Plunkett when respondent knew or should have known that he was not entitled to practice law in California, respondent intentionally or through gross negligence practiced law and held himself out as entitled to practice law when he was not an active member of the State Bar, thus committing acts involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

**Case No. 13-O-10796 – The Estate of Avalos Matter**

**Facts**

On January 29, 2013, respondent filed a petition as the attorney on behalf of petitioners Luis Avalos, Eva Rivas, Natividad Perez, and Agustin Avalos, Jr., in the case entitled *In re the Estate of Thomas Avalos*, San Bernardino County Superior Court case no. PROPS1300063. Respondent knew he was suspended from the practice of law at the time he filed the petition.



## **Conclusions**

### ***Count Nine – Section 6068, Subd. (a) [Unauthorized Practice of Law]***

By filing a petition on January 29, 2013, as the attorney on behalf of petitioners Luis Avalos, Eva Rivas, Natividad Perez, and Agustin Avalos, Jr., in San Bernardino County Superior Court, respondent engaged in the unauthorized practice of law and held himself out as entitled to practice law when he was suspended in willful violation of sections 6125 and 6126 and thereby failed to support the Constitution and laws of the United States and of this state, in willful violation of section 6068, subdivision (a).

As illustrated below, the same facts and circumstances establish respondent's culpability in Counts Nine and Ten. The court therefore assigns no additional weight to Count Nine in determining the appropriate discipline.

### ***Count Ten – Section 6106 [Moral Turpitude]***

By filing a petition as the attorney in the Estate of Avalos matter when respondent knew that he was not entitled to practice law in California, respondent knowingly practiced law and held himself out as entitled to practice law when he was not an active member of the State Bar, thus committing acts involving moral turpitude and dishonesty, in willful violation of section 6106.

## **Case No. 13-O-11291 – The Roach Matter**

### **Facts**

On January 4, 2013, John Roach (Roach) employed respondent and sought legal advice with respect to his interests as a beneficiary of his father's estate and trust. That same day, respondent charged Roach \$2,500 in advanced legal fees to represent Roach, and Roach paid that fee.

Respondent and Roach had a telephone conversation sometime between January 26 and February 8, 2013. During the telephone conversation, respondent knew that he was suspended from the practice of law and that he had been suspended since January 2, 2013. At no time during this telephone conversation did respondent tell Roach that he was suspended from practicing law. During that telephone conversation, respondent represented to Roach that he was working on Roach's case. During the telephone conversation, respondent asked Roach to come to his office on February 8, 2013.

On February 8, 2013, Roach met with respondent at his office, and respondent provided Roach with legal documents that he had prepared to be reviewed. At no time did respondent tell Roach that he was suspended from practicing law. Through negotiations with the San Bernardino District Attorney's Office, respondent later refunded \$1,625 back to Roach. Respondent, however, has not refunded the remaining \$875.

## **Conclusions**

### ***Count Eleven – Section 6068, Subd. (a) [Unauthorized Practice of Law]***

By holding himself out to Roach as entitled to practice law between January 4 and February 8, 2013, and by providing Roach with legal advice and legal documents, respondent held himself out and practiced law when he was not an active member of the State Bar of California. Respondent willfully violated sections 6125 and 6126 and thereby failed to support the laws of the State of California, in willful violation of section 6068, subdivision (a).

As illustrated below, the same facts and circumstances establish respondent's culpability in Counts Eleven and Thirteen. The court therefore assigns no additional weight to Count Eleven in determining the appropriate discipline.

***Count Twelve – Rule 4-200(A) [Illegal Fee]***

Rule 4-200(A) provides that an attorney must not charge, collect, or enter into an agreement for an illegal or unconscionable fee. By charging and collecting \$2,500 for legal services when he was not entitled to practice law, respondent charged and collected an illegal fee, in willful violation of rule 4-200(A).<sup>5</sup>

***Count Thirteen – Section 6106 [Moral Turpitude]***

By holding himself out to Roach as entitled to practice law between January 4 and February 8, 2013, and by providing Roach with legal advice and legal documents when respondent knew that he was not entitled to practice law in California, respondent knowingly practiced law and held himself out as entitled to practice law when he was not an active member of the State Bar, thus committing acts involving moral turpitude and dishonesty, in willful violation of section 6106.

**Case No. 13-O-11460 – The Arzman Matter**

**Facts**

On January 2, 2013, respondent appeared as the attorney for the petitioner in the case entitled *In re Estate of Ernest Arzman*, Riverside County Superior Court case number RIP1100938.

**Conclusions**

***Count Fourteen – Section 6068, Subd. (a) [Unauthorized Practice of Law]***

By appearing as the attorney for the petitioner in the Arzman matter when respondent knew or should have known that he was not entitled to practice law in California, respondent held himself out and practiced law when he was not an active member of the State Bar of

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<sup>5</sup> As noted above, respondent refunded \$1,625 back to Roach. However, the entire \$2,500 fee was illegal. Consequently, respondent still owes Roach the remaining \$875 with interest from January 4, 2013.

California. Respondent willfully violated sections 6125 and 6126 and thereby failed to support the laws of the State of California, in willful violation of section 6068, subdivision (a).

As illustrated below, the same facts and circumstances establish respondent's culpability in Counts Fourteen and Fifteen. The court therefore assigns no additional weight to Count Fourteen in determining the appropriate discipline.

***Count Fifteen – Section 6106 [Moral Turpitude]***

By appearing as the attorney in the Arzman matter when respondent knew or should have known that he was not entitled to practice law in California, respondent intentionally or through gross negligence practiced law and held himself out as entitled to practice law when he was not an active member of the State Bar, thus committing acts involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

**Case Nos. 13-O-10591, et al. – The State Bar Disciplinary Probation Matter**

**Facts**

As discussed above, pursuant to the December 3, 2012 Order, respondent was placed on probation for three years and was ordered to comply with the following relevant conditions of probation, among other conditions:

- Respondent must comply with the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
- Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation during which the probation conditions are in effect. Under penalty of perjury, respondent shall state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report would cover less than 30 days, that report shall be submitted on the next quarter date, and cover the extended period. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the period of probation and no later than the last day of probation; and

- Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to respondent personally or in writing relating to whether respondent is complying or had complied with these probation conditions.

Respondent had actual knowledge of the December 3, 2012 Order and conditions of probation at all times during the pendency of his probation.

On April 10, 2013, respondent submitted a quarterly report to the Office of Probation, which he signed under penalty of perjury, representing that he had complied with the conditions of probation and had complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation for the period of time from January 2 through March 31, 2013.

### **Conclusions**

#### ***Count Sixteen – Section 6068, Subd. (k) [Failure to Comply with Probation]***

Section 6068, subdivision (k), provides that an attorney has a duty to comply with all conditions attached to any disciplinary probation. By violating sections 6106; 6068, subdivision (a); 6125; and 6126 while he was on disciplinary probation pursuant to the December 3, 2012 Order, respondent failed to comply with conditions attached to his disciplinary probation, in willful violation of section 6068, subdivision (k).

#### ***Count Seventeen – Section 6106 [Moral Turpitude]***

By misrepresenting in his April 10, 2013 quarterly report that he had complied with the conditions of probation and had complied with the State Bar Act and the Rules of Professional Conduct when respondent knew that he had practiced law while suspended during the relevant time period, respondent committed an act involving moral turpitude and dishonesty, in willful violation of section 6106.

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## Case No. 13-O-14928 – The Client Trust Account Matter

### Facts

Between December 3, 2012 and May 28, 2013, respondent did not promptly remove funds, which respondent had earned as fees, from respondent's client trust account at Bank of America, and issued the following checks and/or debits from those funds for the payment of personal expenses:

<u>DATE</u>	<u>CHECK #/ DEBIT</u>	<u>PAYEE</u>	<u>AMOUNT</u>
12/3/12	Electronic Debit	Bank of America	\$25.44
12/3/12	Electronic Debit	Bank of America	\$17.29
12/3/12	Electronic Debit	Bank of America	\$5.03
12/5/12	Electronic Debit	FDGL	\$25.79
1/2/13	Electronic Debit	Bank of America	\$24.85
1/2/13	Electronic Debit	Bank of America	\$5.00
1/7/13	Electronic Debit	FDGL	\$25.79
1/22/13	Electronic Debit	US Postal Service	\$4.90
1/23/13	Electronic Debit	Bloomberg Excelsior	\$47.45
1/28/13	Electronic Debit	Pacer	\$43.10
2/4/13	Electronic Debit	Bank of America	\$24.85
2/5/13	Electronic Debit	FDGL	\$25.79
2/12/13	Check No. 4055	Cash	\$812.48
3/4/13	Electronic Debit	Bank of America	\$26.37
3/4/13	Electronic Debit	Bank of America	\$9.28
3/4/13	Electronic Debit	Bank of America	\$4.38
3/5/13	Electronic Debit	FDGL	\$25.79
3/11/13	Electronic Debit	Experian	\$10.00
4/2/13	Electronic Debit	Bank of America	\$30.08
4/2/13	Electronic Debit	Bank of America	\$26.08
4/2/13	Electronic Debit	Bank of America	\$0.06
4/5/13	Electronic Debit	Cash	\$593.18
4/5/13	Electronic Debit	FDGL	\$25.79
5/24/13	Electronic Debit	Go Daddy.com	\$107.88
5/28/13	Electronic Debit	Go Daddy.com	\$25.34

### Conclusions

#### ***Count One – Rule 4-100(A) [Commingling Funds in Client Trust Account]***

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions. By failing

to promptly remove personal funds from his client trust account and issuing checks and debits from those funds for the payment of personal expenses, respondent commingled personal funds in a bank account labeled “Trust Account,” “Client’s Funds Account,” or words of similar import, in willful violation of rule 4-100(A).

***Count Two – Section 6068, Subd. (k) [Failure to Comply with Probation]***

Respondent’s commingling, as detailed in Count One, also constituted a violation of the terms of his disciplinary probation. Specifically, respondent’s violation of rule 4-100(A) was a violation of the conditions attached to his disciplinary probation in State Bar case number 11-O-19134 (S205546) in that he failed to comply with all provisions of the State Bar Act and the Rules of Professional Conduct between December 3, 2012 and May 28, 2013. Respondent’s failure to comply with this term of his probation constituted a willful violation of section 6068, subdivision (k).

**Aggravation<sup>6</sup>**

**Prior Record of Discipline (Std. 1.5(a).)**

As noted above, the Supreme Court, on December 3, 2012, issued Order No. S205546 (State Bar Court case no. 11-O-19134) suspending respondent from the practice of law for one year, stayed, with three years’ probation, including a 30-day actual suspension. In this matter, respondent stipulated, in a State Bar investigation matter, to commingling personal funds in his client trust account and failing to maintain client trust account ledgers for each of his clients. In aggravation, respondent committed multiple acts of misconduct. In mitigation, respondent had no prior record of discipline, he demonstrated candor toward the State Bar, he cooperated with the State Bar by entering into a stipulation, and there was no client harm.

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<sup>6</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

In addition, the parties stipulated in mitigation that respondent had “changed his practices to comply with rule 4-100 of the Rules of Professional Conduct by not depositing his personal funds in his client trust account and by not issuing checks or debits directly out of his client trust account.” The stipulation—which was signed by respondent on July 11, 2012—went on to state that respondent “maintains a separate personal account and business account for his own deposits of his personal funds and payments of personal and non-client-related expenditures,” and that he “still maintains a client trust account to hold client funds in trust and to make payments on behalf of clients to clients and/or third parties.”

**Multiple Acts (Std. 1.5(b).)**

Respondent is culpable of multiple acts of misconduct.

**Indifference (Std. 1.5(g).)**

Respondent’s actions demonstrate his indifference toward rectification or atonement for the consequences of his misconduct. Respondent has only partially refunded the illegal fee he received from Roach and has not refunded the outstanding funds paid by Chavira. Respondent’s indifference is also clearly demonstrated by his failure to conform his conduct following his prior discipline. Despite receiving mitigation in his prior discipline for “changing his practices to comply with rule 4-100,” respondent continued to use his client trust account as a personal bank account, in direct violation of rule 4-100(A). Consequently, respondent’s indifference toward rectification or atonement for the consequences of his misconduct warrants significant consideration in aggravation.

**Significant Client Harm (Std. 1.5(f).)**

Respondent’s misconduct resulted in significant harm to his clients. Respondent deprived his clients of the monies they paid him in advanced attorney fees and has not provided



adequate restitution to either Chavira or Roach. Consequently, respondent's significant harm to his clients warrants some consideration in aggravation.

## **Mitigation**

### **Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)**

Respondent entered into a partial stipulation to facts, culpability, and admission of documents. Respondent's candor and cooperation with the State Bar warrant some consideration in mitigation.

## **Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d. 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d. 1016, 1025; Std. 1.1.)

In determining the level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d. 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d. 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.7 provides that if a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed. Standard 1.7 further states that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any additional aggravating or mitigating factors.

In this case, the standards call for the imposition of a sanction ranging from actual suspension to disbarment. (Standards 2.3(b), 2.6(a), 2.7, and 2.10.) The most severe sanction is

found at standard 2.7 which provides that disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption, or concealment of a material fact.

Due to respondent's prior record of discipline, the court also looks to standard 1.8(a) for guidance. Standard 1.8(a) states that when an attorney has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar requested that respondent be disbarred. Respondent, on the other hand, argued that disbarment or a lengthy period of actual suspension are not warranted. The court looked to the case law for guidance and found *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83; *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639; and *Arm v. State Bar* (1990) 50 Cal.3d 763, to be somewhat instructive.

In *Wyrick*, the attorney, who was suspended, held himself out as entitled to practice law on multiple occasions in order to procure employment. The attorney's omissions and misrepresentations were found to constitute moral turpitude. In aggravation, the attorney had a prior record of discipline that was found to be remote in time and of minimal severity. Additionally, the attorney harmed the administration of justice, undermined the public's

confidence in the court system, and committed multiple breaches of his ethical duties. Little, if any, evidence was presented in mitigation. The Review Department recommended that the attorney be suspended from the practice of law for two years, stayed, with a two-year period of probation, including a six-month actual suspension.

In *Mason*, the attorney made a court appearance and signed and served a trial brief while suspended by the Supreme Court for misconduct in a prior discipline. He did not inform either the court or opposing counsel that he was suspended from the practice of law. He was found culpable of moral turpitude in practicing law while suspended. In aggravation, the attorney had one prior record of discipline for an unrelated offense. The attorney's volunteer and pro bono work were considered in mitigation. The Review Department recommended that the attorney be suspended for three years, stayed, with a three-year period of probation, including a 90-day actual suspension.

In *Arm*, the attorney was found culpable of misleading a court by failing to disclose a discipline suspension scheduled to coincide with an upcoming court hearing. The attorney was also found culpable of commingling funds in his client trust account. In aggravation, the attorney had been previously disciplined on three prior occasions.<sup>7</sup> The Supreme Court found that the lack of harm and the absence of bad faith constituted compelling mitigation, and, therefore, disbarment was not warranted. Instead, the Supreme Court ordered that the attorney be suspended for five years, that execution of suspension be stayed and the attorney be placed on probation for five years, including an eighteen-month period of actual suspension.

The facts and circumstances reflected in the present case are more severe than *Wyrick* or *Mason*. While on disciplinary probation, respondent continued to practice law during the period

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<sup>7</sup> The attorney's prior disciplines included a public reproof, a stayed suspension, and a 60-day actual suspension.

of his actual suspension, falsely declared under penalty of perjury that he did not violate any rules or statutes during that time period, and committed several other acts of misconduct including facilitating the unauthorized practice of law by non-attorneys. While respondent claims that he did not initially realize that he was suspended, it greatly concerns the court that he continued to practice law even after he admits learning that he was unauthorized to practice.

In addition, the court is equally concerned by the fact that respondent again violated rule 4-100(A)—just as he had in his prior discipline. This is especially disturbing considering that respondent received mitigation in his first discipline for the changes he had purportedly made in the handling of his client trust account.

Consequently, the court finds that the present case is more on par with *Arm*. While respondent only has one prior record of discipline, the facts and circumstances of the present matter are more egregious. In addition, the present matter involves less mitigation than *Arm*. Further, respondent's misconduct indicates an unwillingness or inability to learn from past mistakes. Clearly, a significant period of actual suspension is now warranted.

Therefore, after weighing the evidence, including the factors in aggravation and mitigation, and considering the standards and the case law, the court finds that the appropriate discipline should include, among other things, an actual suspension of two years and until respondent provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law.

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### **Recommendations**

It is recommended that respondent **Dennis M. Assuras**, State Bar Number 85874, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that respondent be placed on probation<sup>8</sup> for a period of four years subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first two years of probation, and respondent will remain suspended until the following requirements are satisfied:
  - i. He makes restitution to the following payees (or reimburses the Client Security Fund, to the extent of any payment from the fund to the payees, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles:
    - (1) Richard Chavira in the amount of \$2,625 plus 10 percent interest per year from July 26, 2012; and
    - (2) John Roach in the amount of \$875 plus 10 percent interest per year from January 4, 2013.
  - ii. Respondent must provide satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law before his actual suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation during the preceding calendar quarter. In addition to all

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<sup>8</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.
6. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.

At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.<sup>9</sup>

### **Multi-State Professional Responsibility Examination**

It is not recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination, as he was recently ordered to do so, on December 3, 2012, by the Supreme Court in case no. S205546.

### **California Rules of Court, Rule 9.20**

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

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<sup>9</sup> It is not recommended that respondent be ordered to attend the State Bar's Ethics School or Client Trust Account School, as he has recently been ordered to do so, on December 3, 2012, by the Supreme Court in case no. S205546.

**Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: December \_\_\_\_\_, 2014

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LUCY ARMENDARIZ  
Judge of the State Bar Court